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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/582,079

08/01/2006

Edith Sorensen

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EXAMINER

KENNEDY, NICOLETTA

ART UNIT

PAPER NUMBER

1611

NOTIFICATION DATE

DELIVERY MODE

06/03/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/582,079	Applicant(s) SORENSEN, EDITH	
	Examiner Nicoletta Kennedy	Art Unit 1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 16-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 20 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/4/10</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

Claims 1-29 are currently pending. Claims 16-21 are withdrawn as drawn to a non-elected group.

Priority

This application, filed June 8, 2006, is a national stage entry of PCT/EP04/13963, filed December 8, 2004. PCT/EP04/13963 is a continuation in part of PCT/EP03/13873, filed December 8, 2003.

Withdrawn Rejections

1. The rejection of claims 1-4 and 22-23 under 35 U.S.C. 102(b) over Lion Corp (JP 01-172315) (pub. July 7, 1989) as evidenced by Grodberg (US 5,156,845) (pub. Oct. 20, 1992) is withdrawn in view of Applicant's amendment.
2. The rejection of claims 1, 6-9, 11, 14 and 24-25 under 35 U.S.C. 103(a) over Lion Corp (JP 01-172315) (pub. July 7, 1989) as evidenced by Grodberg (US 5,156,845) (pub. Oct. 20, 1992) and in view of Majeti et al. (US 6,682,722) (filed Sept. 3, 2002) is withdrawn in view of Applicant's amendment.
3. The rejection of claims 1, 5, 10 and 15 under 35 U.S.C. 103(a) over Lion Corp (JP 01-172315) (pub. July 7, 1989) as evidenced by Grodberg (US 5,156,845) (pub. Oct. 20, 1992) and in view of Holme et al. (US 6,685,916) (filed Oct. 31, 2002) is withdrawn in view of Applicant's amendment.
4. The rejection of claims 1, 5 and 12-13 under 35 U.S.C. 103(a) over Lion Corp (JP 01-172315) (pub. July 7, 1989) as evidenced by Grodberg (US 5,156,845) (pub. Oct.

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20, 1992) and in view of Ning et al. (US 6,703,000) (filed May 15, 2002) is withdrawn in view of Applicant's amendment.

New Rejections Necessitated By Amendment

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-4, 6-9, 11-13 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tame-Said (abstract, WO 97/19668) (pub. June 5, 1997) in view of Bauman (US 3,928,618) (issued Dec. 23, 1975).

Regarding claims 1, 4, 6, 8, 11-13, Tame-Said teach a toothpaste and mouthwash in tablets which dissolve in the mouth when contacted with saliva (abstract). The tablet is comprised of 18 mg ascorbic acid (5.2% by weight), 50 mg sodium bicarbonate (14.49% by weight), 40 mg tricalcium phosphate (11.59% by weight), 17 mg sodium lauryl sulfate, 70 mg arabic gum (water soluble lozenge base) and 150 mg

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natural sweetness and flavoring agents (abstract). However, Tame-Said fail to teach that calcium pyrophosphate is used in the tablet. Bauman cures this deficiency.

Bauman teaches dentrifices such as a tablet comprising polishing material, such as tricalcium phosphate and calcium pyrophosphate (column 3, line 66 to column 4, line 4).

It would have been prima facie obvious to a person of ordinary skill in the art at the time of the invention to have combined the teachings of Tame-Said with those of Bauman to have substituted calcium pyrophosphate for tricalcium phosphate. One would have been motivated to do so because both tricalcium phosphate and calcium pyrophosphate are known polishing materials used in the dentrifice art in tablets and Tame-Said teaches the use of tricalcium phosphate, a polishing agent, in the lozenge.

Regarding claims 2-3, 7, 9 and 22-25, MPEP 2144.05 states that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation" quoting *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In the instant case, the combination of Tame-Said and Bauman teach that calcium pyrophosphate is present at 11.59% by weight and that sodium bicarbonate is present at 14.49% by weight. Claiming that lesser amounts of the polishing and whitening agents are required is not inventive.

7. Claims 11, 14 and 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tame-Said (abstract, WO 97/19668) (pub. June 5, 1997) in view of Bauman (US 3,928,618) (issued Dec. 23, 1975) as applied to claims 1-4, 6-9, 11-

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13 and 22-25 above, and further in view of Majeti et al. (US 6,682,722) (filed Sept. 3, 2002).

The combination of Tame-Said and Bauman teach each limitation of claims 1 and 11 but fail to teach that the tablet comprises urea. Majeti et al. cure this deficiency.

Regarding claims 11, 14 and 26, Majeti et al. teach oral care compositions for whitening of teeth (abstract) wherein the composition may be a lozenge (claim 9). Majeti et al. further teach that the oral care composition may comprise urea peroxide present at 5.5% (column 19, example 4, IV G).

It would have been *prima facie* obvious to a person of ordinary skill in the art at the time the invention was made to have combined the teachings of Tame-Said and Bauman with those of Majeti et al. to incorporate urea peroxide into the composition. One would have been motivated to do so because Bauman teaches that the tablet may comprise whitening agents and Majeti et al. teach that urea peroxide is a tooth bleaching agent.

Regarding claims 27-29, Majeti et al. teach that the oral care composition may comprise urea peroxide as a bleaching agent from about 0.1% to about 20.0% (claim 13). MPEP 2144.05 states that “[i]n the case where the claimed ranges ‘overlap or lie inside ranges disclosed by the prior art’ a *prima facie* case of obviousness exists” quoting *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976). In the instant case, the claimed ranges lie inside the range disclosed by Majeti et al. and are therefore *prima facie* obvious.

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7. Claims 1, 5, 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lion Corp (JP 01-172315) (pub. July 7, 1989) as evidenced by Grodberg (US 5,156,845) (pub. Oct. 20, 1992) and in view of Holme et al. (US 6,685,916) (filed Oct. 31, 2002).

8. **Claims 5, 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tame-Said (abstract, WO 97/19668) (pub. June 5, 1997) in view of Bauman (US 3,928,618) (issued Dec. 23, 1975) as applied to claims 1-4, 6-9, 11-13 and 22-25 above, and further in view of Holme et al. (US 6,685,916) (filed Oct. 31, 2002).**

The combination of Tame-Said and Bauman teach each limitation of claim 1 but fail to teach that the tablet comprise may be sugarless, comprises an encapsulated agent, or is in the form of a hard-boiled lozenge. Holme et al. cure these deficiencies.

Regarding claim 5, Holme et al. teach a composition for removing stains from dental surfaces. The composition may be a confectionary including lozenges (column 3, lines 47-53). The sweetener used in the confectionary may comprise sugar or be sugarless and instead use sugarless sweeteners such as sorbitol, mannitol, xylitol and maltitol (column 10, lines 33-41 and column 12, lines 9-15).

It would have been prima facie obvious to a person of ordinary skill in the art at the time the invention was made to have combined the teachings of Tame-Said and Bauman with those of Holme et al. to substitute sugarless sweetener for sugar in the composition. One would have been motivated to do so because using sugarless

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sweeteners reduces the amount of calories in the lozenge and does not contribute to the formation of dental plaque.

Regarding claim 10, Holme et al. teach that the composition may comprise encapsulated peroxide (claims 1 and 27). The peroxide is the active ingredient in the composition (abstract).

Regarding claim 15, Holme et al. teach that the confectionary may be hard-boiled (column 12, line 21).

Response to Arguments

6. Applicant's arguments with respect to claims 1-15 and 22-29 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

No claims are allowable.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicoletta Kennedy whose telephone number is (571)270-1343. The examiner can normally be reached on Monday through Thursday 8:15 to 6:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Gollamudi Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. K./

Examiner, Art Unit 1611

/Sharmila Gollamudi Landau/
Supervisory Patent Examiner, Art Unit 1611